

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA

*In the matter of an application for Mandates in  
the nature of Writs of Certiorari, Prohibition and  
Mandamus under and in terms of Article 140 of  
the Constitution.*

CA/WRIT/637/2021

Millaniyage Duminda Perera

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**Petitioner**

Vs.

1. S M Chandrasena, MP  
Hon. Minister of Lands,  
“Mihikatha Madura”, Land  
Secretariat, No. 1200/6,  
Rajamalwatta Rd, Battaramulla.
2. Urban Development Authority  
6<sup>th</sup>, 7<sup>th</sup> & 9<sup>th</sup> Floors, “Sethsiripya”  
Battaramulla.
3. M. M. K. Dilrukshi Walpola  
Divisional Secretary,  
Divisional Secretariat, Maharagama.
4. Nishantha De Zoysa  
Senior Superintendent of Police,  
Director,  
Criminal Investigation Department,  
York Street, Colombo 01.

5. Mahesh Chaminda  
No. 24/31, Kospelanwatte,  
Suwarapola, Piliyandala.

**Respondents**

**Before** : Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel** : Chrishmal Warnasuriya with Erandi Hikkaduwa for the Petitioner.  
Navodi De Zoysa, SC for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.  
W. W. B. P. Wickramasinghe for the 6<sup>th</sup> Respondent.

**Supported on** : 14.03.2022

**Written Submissions** : Petitioner - 16.06.2022  
1<sup>st</sup> to 3<sup>rd</sup> Respondents - 17.06.2022

**Decided on** : 19.07.2022

**Sobhitha Rajakaruna J.**

The Petitioner filed the instant application on 20.12.2021. Although the Petitioner's motion dated 20.12.2021 and the said Petition refers to annexures 'P1' to 'P16', only a set of documents marked as 'P1' to 'P11' were annexed to the Petition in the main docket relating to this case. Thereafter, the Petitioner filed a motion dated 10.01.2022 and tendered documents marked 'P13(a)', '(b)', '(c)', '(d)', '(e)' & '(f)' intimating that the corresponding documents annexed to the Petition are not clear.

When this matter was taken up for support on 03.02.2022, the learned Counsel for the Petitioner undertook to tender a complete set of documents and support the application thereafter as it was observed that particularly the documents marked as 'P11' was not available in the main docket. On the same day i.e., 03.02.2022 at 9.36 am (*Vide*-the endorsement with the rubber stamp of the Court of Appeal) the Petitioner filing a motion sought an order from Court to accept a further set of documents marked 'P2(b)' and 'P3'

indicating that the documents marked 'P2(b)' and 'P3' annexed to the Petition were incomplete and/or inaccurate due to an oversight when copies were being made. The document 'P2(b)' annexed to the Petition and the 'P2(b)' tendered along with the said motion are two different copies of a plan No. 7657. The learned Registered Attorney of the Petitioner gives the same certification on both such documents stating that she certifies the said document as a 'complete, exact and true copy of the original document'.

The Petitioner filed another motion on 11.02.2022 informing Court that it had been observed that the full documents marked as 'P11' has been misplaced and was not available in the docket. Accordingly, the Petitioner has tendered along with the said motion a set of documents marked 'P11', 'P11(a)', 'P11(b)' and 'P11(c)'. The paragraph 15 of the Petition referred to 'P11(a)' as a sketch prepared by the Petitioner's father who is supposed to be a qualified registered Licensed Surveyor whereas the said 'P11(a)' is another copy of the preliminary plan 5529 and the learned Registered Attorney of the Petitioner has certified on the face of the said 'P11(a)' that it was a 'complete, exact and true copy of the original document'. The said learned Registered Attorney has made the same certification on the 'P11' as well.

Furthermore, it is observed that the Petitioner has made reference to documents marked as 'P14' and 'P15' in the Petition and such documents are only available in the copies of the main docket.

On 29.03.2022 the Petitioner filing another motion moved that this matter be fixed for support for interim relief prayed for in the prayer of the Petition and also tendered another set of documents marked 'P17', 'P18', 'P19' & 'P20'. By way of another motion dated 20.05.2022, the Petitioner has filled an affidavit of the power of attorney holder of the Petitioner and introduced three new documents marked 'P21(a)', 'P21(b)' & 'P22'. ('P22' is the Journal entry dated 29.11.2021 of case No. CA/Writ/147/21).

In view of the manner in which the Petitioner has tendered documents to Court, it is appropriate to draw my attention to Rule No. 3(1)(a) of the Court of Appeal Rules as the Petitioner has not given any reason in his Petition for his inability to tender all documents along with the Petition and has not sought leave of the Court to furnish any document at a later stage. Reserving rights to add parties and documents and seeking permission from

Court for such act, in my view, are distinct instances. The said Rule No. 3(1)(a), inter alia, reads as follows;

“Where a Petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a Petitioner fails to comply with the provisions of this Rule the Court may, **ex mero motu** or at the instance of any party, dismiss such application.”

I take the view that the Petitioner has not obtained leave of this Court to submit any document at a stage after filling the Petition and has not given reasons in his Petition for inability of tendering the documents all together with the Petition. Although the said finding is sufficient to dispose the application of the Petitioner in view of the said Rule of the Court of Appeal, I need to examine whether there is a prima facie case which warrants this Court to issue formal notice on the Respondents of this application.

The Petitioner has purchased from the 6<sup>th</sup> Respondent the land morefully described in the schedule of the Deed of Transfer No. 795 (marked ‘P2(a)’) attested by H. T. Samanpali Amarasiri on 25.09.2020 (‘subject land’). Petitioner states that he and the 6<sup>th</sup> Respondent were unaware that an acquisition of land has been taken place as far back in 1980 for the building of new parliamentary complex. The contention of the learned Counsel for the Petitioner is that it appears from the surveyor’s report of the father of the Petitioner that the Petitioner’s land also falls within the larger area acquired in 1980.

The Petitioner claims that on or around March 2020, upon being reliably informed by some neighbors, he has learnt that the said land was acquired by the predecessor of the 1<sup>st</sup> Petitioner by way of an order under the proviso to Section 38A of the Land Acquisition Act (‘Act’) published in the Gazette Extraordinary Notification No. 89/2 dated 19.05.1980, marked ‘P9’.

Thereafter a notice under Section 7 of the Act has been published in Gazette Notification (Extraordinary) No.185/6 dated 23.03.1982, marked ‘P10’. The said Gazette Notification specifies the extent and boundaries of the area acquired by the State and accordingly, Lot No. 01 to Lot 23 of the Preliminary Plan No. 5529 (marked ‘P11’) have been acquired. The Lot 05 of Preliminary Plan No. 5529 which is in extent of A:28, R:2, P:33 appears

to correspond to the description of Lot 04 of the Surveyor General's Advance Tracing No. කො/අ/79/75 reflected in the above Gazette Notification marked 'P9'.

The 1<sup>st</sup> to 3<sup>rd</sup> Respondents have submitted to Court the decision made under Section 17 of the Act marked as 'R1' and also the document marked 'R2' in proof of payment of compensation to the respective claimants. By virtue of the order made under Section 44 of the Act on 28.10.1987 (marked 'R3'), the land described in its schedule has been vested with the 2<sup>nd</sup> Respondent-Urban Development Authority ('UDA')

It is important to note that the Petitioner has demanded rectification and vindication of his rights from the 6<sup>th</sup> Respondent. The Attorney-at-Law of the Petitioner alleges in 'P14' (letter dated 08.10.2021) that the 6<sup>th</sup> Respondent has committed a deliberate act of fraud and cheating by unlawfully obtaining money from the Petitioner by way of the transaction in respect of the said deed of transfer marked 'P2(a)'. The 6<sup>th</sup> Respondent has replied to the above demand by communication dated 20.10.2021, marked 'P15', denying the allegations put forward by the Petitioner. Additionally, the Petitioner has lodged a complaint with the Director Criminal Investigation Department of Sri Lanka Police (5<sup>th</sup> Respondent) and according to the Petitioner the investigations are still pending.

Thus, it appears that there is an apparent dispute between the Petitioner and the 6<sup>th</sup> Respondent as to whether the said 6<sup>th</sup> Respondent had sold the subject land knowingly that its' a portion of a larger land acquired by the State as mentioned above. I take the view that the fraudulent transaction as claimed by the Petitioner and the validity of the transfer deed marked P2(a) cannot be reviewed by this Court in the instant application for judicial review.

In addition to the stance taken by the Petitioner in his pleadings, he further avers in the Petition that there is no proper demarcation or identification of lands or boundaries relating to any such acquisition of the subject property. In that event it is obvious that the Petitioner raises disputed facts to the effect that the subject land is not within the boundaries of the aforesaid land acquired by the State. It is trite law that where the facts are in dispute and in order to get at the truth it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses. Hence, the Petitioner has the opportunity to get such issues resolved by filling an action in an appropriate forum.

At this stage, I need to consider the reliefs sought by the Petitioner in the prayer of the Petition, wherein the Petitioner seeks, inter alia, for mandates in the nature of writ of Certiorari;

- i. to quash the determination of the 1<sup>st</sup> Respondent published in the Gazette Notification (Extraordinary) No. 89/2, dated 19.05.1980, marked 'P9'; (the order under section 38 of the Act)
- ii. to quash the determination of the 3<sup>rd</sup> Respondent published in the Gazette Notification (Extraordinary) No.185/6, dated 23.03.1982, marked 'P10'; (the order under section 7 of the Act)

The learned State Counsel who appears for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents argues that the Petitioner is guilty of laches as he is challenging an acquisition taken place two decades ago. Further she argues that the decisions in the said 'P9' & 'P10' have been taken according to law and that the Petitioner has failed to establish any reasons as to why such decisions are *ultra vires*. Based on the circumstances of this case, I also don't see any viable ground to determine that those decisions in 'P9' and 'P10' are *ultra vires*.

The 1<sup>st</sup> to 3<sup>rd</sup> Respondents further state that though the Petitioner might have been a bona fide purchaser and might not have known about the acquisition, no legal right can be granted to the Petitioner over the subject land since the alleged transfer of title of the subject land from the 6<sup>th</sup> Respondent to the Petitioner stands null and void as the 6<sup>th</sup> Respondent also does not have the legal right to the subject land.

Although the Petitioner is relying upon the documents marked 'P5', 'P6', 'P7(b)', 'P8(a)' & 'P8(b)', my view is that no title to the subject land can be bestowed in favor of the Petitioner upon those documents, as such decisions of the local authorities cannot supersede the determinations made by relevant authorities under the provisions of the Act. In Judicial Review such as an application for writ of Certiorari which is to quash a decision, the inquiry of the reviewing Court is eventually to scrutinize the decision-making process.

However, I need to draw my attention to another contention of the Petitioner which emphasized that the subject land has not been utilized for the intended public purpose upon which the land was acquired in 1980. The Petitioner alleges that the said acquisition of Lots 01 to 23 of the Preliminary Plan 5529 was for an urgent public purpose of

constructing the Parliamentary Complex which was prevalent in or around 1981 and the subject land has not been utilized for the said public purpose for decades. The Petitioner further asserts that the said subject land is now being identified as a part of an appropriate land for the construction of a project titled 'Colombo Bird Park'.

In view of those assertions of the Petitioner, the reliefs prayed for by the Petitioner are to seek, *inter alia*, for mandates in the nature of writ of Mandamus;

- i. Directing the 1<sup>st</sup> Respondent to act under Section 39 of the Act and revoke Notice marked 'P9';
- ii. Compelling the 1<sup>st</sup> Respondent to act under Section 39A of the Act and divest the Petitioner's property forming the subject land.

The section 39 permits the relevant Minister to revoke the vesting order under the Act only if the possession of the land has not actually been taken for and on behalf of the State. In the instant application the document '2R2' is vital and accordingly, possession of the land acquired has been taken by the UDA and thus any revocation of the vesting order does not arise in this application.

However, the said section 39A (1) & (2) read as follows;

*(1) Notwithstanding that by virtue of an Order under section 38 (hereafter in this section referred to as a " vesting Order") any land has vested [S 2, 8 of 1979] absolutely in the State and actual possession of such land has been taken for or on behalf of the State under the provisions of paragraph (a) of section 40, the Minister may, subject to subsection (2), by subsequent Order published in the Gazette (hereafter in this section referred to as a " divesting Order ") divest the State of the land so vested by the aforesaid vesting Order.*

*(2) The Minister shall prior to making a divesting Order under subsection (1) satisfy himself that;*

*(a) no compensation has been paid under this Act to any person or persons interested in the land in relation to which the said divesting Order is to be made*

*(b) the said land has not been used for a public purpose after possession of such land has been taken by the State under the provisions of paragraph (a) of section 40;*

- (c) *no improvements to the said land have been effected after the Order for possession under paragraph (a) of section 40 had been made; and*
- (d) *the person or persons interested in the said land have consented in writing to take possession of such land immediately after the divesting Order is published in the Gazette.*

As opposed to the Petitioner's contention on the said Section 39 of the Act, the learned State Counsel argues that the provisions of section 39 will not be applicable for lands that has been acquired and where compensation had been already paid. Anyhow it is necessary to draw my attention at this stage to one of the complaints of the Petitioner that neither the 6<sup>th</sup> Respondent nor the Petitioner has been paid compensation in reference to the subject land.

In light of the above, I am of the view that a question arises as to whether the said subject land has been utilized by the State after acquisition for the purpose upon which the land had been acquired and also whether the authorities can now use the said property for a purported 'bird park'. Further, I take the view that a fuller clarification on those questions should be submitted by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

The Court in the exercise of its jurisdiction in applications for judicial review needs to be satisfied that there is a proper basis for claiming judicial review, and it is wrong to issue formal notice on the Respondents without identifying an appropriate question on which the case can be properly proceeded. (*Also see-R vs. Social Security Commissioner ex p. Pattni* (1993) 5 Admin LR 219 at 223G). I have extensively discussed on issuance of notice in ***Prof. D. G. Harendra de Silva and others vs. Hon. Pavithra Wanniarachchi, Minister of Health, Nutrition and Indigenous Medicine and others, CA/Writ/422/2020, decided on 01.02.2022.***

Having regard to the above established principles on issuance of notice, I am of the view that formal notice on the Respondents should be issued only in reference to the paragraph (d) & (e) ii of the prayer of the Petition of the Petitioner. In the circumstances, I am not inclined to issue an interim relief as prayed for in the Prayer of the Petition based on the basic principles applicable for issuance of interim relief and on all the reasons set forth above.



However, in light of my above findings, I take the view that any prejudice that may be caused to the Petitioner by evicting him from the subject land, before this Court hear all parties on the questions identified by Court, should be avoided. Therefore, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are directed not to take steps to evict the Petitioner from the subject land without following a proper procedure prescribed by law until the date of the Argument of this case. Moreover, I have come to the conclusion that by the reasons of the special circumstances of this case, I should not make any order based on the aforesaid Court of Appeal Rule No.3(1)(a).

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**